

**From:** David J Harr  
**To:** 'microsoft.atr(a)usdoj.gov'  
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**Subject:** Microsoft Settlement

I feel that the proposed Microsoft settlement is not in the best interests of the consumer, and I oppose it. Although there are many problems with the settlement, the one that I am most concerned about is with sections III.F and III.G. Although these sections purport to prohibit exclusionary licensing practices by Microsoft, it fails to cover a class of ISVs that I am particularly concerned about, namely, ISVs that ship open source applications. One example of this is contained in the End User License Agreement for the Windows Media Encoder 7.1 Software Development Kit. That EULA reads, in part

...you shall not distribute the REDISTRIBUTABLE COMPONENT in conjunction with any Publicly Available Software. "Publicly Available Software" means each of (i) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models ... Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); The Artistic License (e.g., PERL); the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL);...

If an ISV chooses to publish their application under an open source license are specifically prohibited by this EULA from distributing the associated APIs of the Windows Media Encoder with their application. This places the onus of getting the API, installing it, and verifying it on the end user, in effect leaving the Applications Barrier to Entry in place for ISVs using this licensing model. Therefore, I feel that until the Final Judgement addresses this issue, it should not be enacted as written.

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